

Instructional Telecommunications  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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February 8, 2000

Ms. Magalie Roman Salas, Secretary  
Federal Communications Commission  
455 12th Street, SW  
Washington, D.C. 20554

Re: *Amendment of Parts 1, 21 and 74 to Enable Multipoint  
Distribution Service and Instructional Television Fixed Service  
Licensees to Engage in Fixed Two-Way Transmissions*

MM Docket No. 97-217

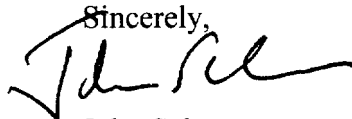
File No. RM-9060

Consolidated Opposition to Petitions for Further Reconsideration  
and Petition for Clarification and Further Reconsideration  
of Instructional Telecommunications Foundation, Inc.

Dear Ms. Salas:

Attached hereto are an original and four copies of the Consolidated Opposition to Petitions for Reconsideration and Petition for Clarification and Further Reconsideration ("Consolidated Opposition") of Instructional Telecommunications Foundation, Inc. in the above-captioned proceeding.

Sincerely,



John Schwartz  
President

Attachments

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
 ) MM Docket No.  
Amendment of Parts 1, 21 and 74 to Enable ) 97-217  
Multipoint Distribution Service )  
and Instructional Television Fixed ) File No. RM-9060  
Service Licensees to Engage in Fixed )  
Two-Way Transmissions )

To: The Commission

**INSTRUCTIONAL TELECOMMUNICATIONS FOUNDATION, INC.**

**CONSOLIDATED OPPOSITION TO PETITIONS FOR FURTHER RECONSIDERATION  
AND PETITION FOR CLARIFICATION AND FURTHER RECONSIDERATION**

I. ITF Opposes BellSouth's Request That the Commission Permit  
ITFS Leases Which Require That Such Leases Be Assigned and  
Assumed if the ITFS License is Transferred.

Indefatigably, BellSouth Corporation and BellSouth Wireless Cable, Inc. (collectively "BellSouth") trot out their previously-rejected case that the Commission should allow an ITFS lease to specify that it must be assigned and assumed by a transferee of the underlying ITFS license.

The reason the Commission repeatedly has rejected BellSouth's request---a reason which BellSouth appears to be incapable of grasping---is that ITFS licenses are granted for the primary purpose of promoting education. Section 74.931(a)(1) of

the Commission's Rules states clearly:

Instructional television fixed stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities...

The commercial use of excess ITFS capacity is intended to give educators resources to advance their mission; it is not intended to supplant that mission. BellSouth's proposal would allow a private commercial contract to take primacy even when an educator determines that newly-acquired ITFS frequencies should be devoted to their primary educational purpose. This is tantamount to the tail's wagging the dog.

BellSouth argues that the Commission applies different standards to a wide variety of contracts in other regulated services, and to other aspects of ITFS regulation.<sup>1</sup> The reason is that other services do not share ITFS's instructional mission, and that other aspects of ITFS regulation are not as central as its very purpose.

BellSouth argues that the Commission's ruling diminishes the commercial value of ITFS spectrum, and thus the compensation which ITFS licensees receive.<sup>2</sup> BellSouth is probably right. It

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<sup>1</sup> See BellSouth's Petition for Further Reconsideration ("BellSouth Petition), p. 4, pp. 10-11.

<sup>2</sup> BellSouth Petition at pp. 6-8. BellSouth, along with Sprint and MCI/WorldCom, have invested heavily in ITFS during the Commission's current policy regime with respect to lease assignments. This fact puts to rest any suggestion that such a policy inhibits commercial interest in ITFS spectrum.

is likely that the Commission's requirement that ITFS licensees transmit instructional programming similarly has the effect of diminishing financial returns to ITFS licensees. Such policies nonetheless are appropriate in view of the primary purpose of ITFS spectrum, which never has been to secure financial return.

BellSouth complains that its critics, including ITF, mischaracterize its proposal,<sup>3</sup> which BellSouth limns as simply providing flexibility to ITFS licensees. This is a matter of disagreement rather than misunderstanding. We believe that the essence of ITFS regulation is to provide licensees flexibility only to the extent that such flexibility furthers the educational purpose of the service. This excludes, for instance, the flexibility to convert ITFS channels into MMDS channels. We also believe that it excludes the flexibility to do what BellSouth urges---bind a new ITFS licensee to a commercial agreement the educator never would have accepted for a period that can approach 15 years.

In fact, ITF believes that the Commission's existing policy offers ITFS licensees both extensive and appropriate flexibility. If a licensee wants to enter into a commercial lease, it is given wide latitude as to permitted terms, and, in the event of a transfer, the transferee is given the same array of choices. The new educator is free to assume the contract, but, instead of

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<sup>3</sup> Id., pp. 4-5.

being bound to a prior licensee's judgment, the transferee also is free to make a fresh start.

The essence of BellSouth's proposal is to give further latitude current ITFS licensees, but with the intent that any possible successor will have much less latitude.

Finally, BellSouth complains about the fact that the Commission has grown terse in its most recent rejection of well-worn arguments.<sup>4</sup> If little explanation is now needed, that is because this issue has been so fully vetted over the years.

Far from being arbitrary and capricious in maintaining its long-established policy, as BellSouth argues, the Commission would face a monumental burden in trying to explain why, at this very late date, it would change course with respect to this central issue.

II. ITF Supports the Position of the National ITFS Association, the Catholic Television Network, and Others That Only ITFS Licensees Should Operate High Power Boosters Within Their Stations' Protected Service Areas.

The National ITFS Association ("NIA"), the Catholic Television Network ("CTN"), the Archdiocese of Los Angeles Education and Welfare Corporation, Caritas Telecommunications, the Roman Catholic Communications Corporation, San Francisco Bay Area, the Santa Clara County Office of Education, and San Jose State University (collectively "California Educators") all urge

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<sup>4</sup> Id., pp. 8-11.

the Commission to retract its recent decision that commercial lessees of ITFS capacity be allowed to operate high power boosters in lieu of the ITFS licensees.<sup>5</sup>

As these various Petitions point out, in a two-way context there is essentially no difference between a main station and a high power booster. Indeed, if many cells are used the main station will have relatively little significance. Thus to allow a commercial entity to hold ITFS booster licenses is tantamount to allowing it to hold the underlying ITFS station license.

While there is only a tiny efficiency to be gained by allowing a lessee to hold a booster license,<sup>6</sup> this policy presents a great danger because the Commission does not require that the lessee give up the boosters at the end of the lease term---merely that it offer to do so. Its policy allows the lessee to reward the ITFS licensee if the licensee rejects this offer, and, for that matter, also turns in its main channel license.

In essence, by a rather obscure backdoor route---and without considering the full implications---the FCC has legalized the

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<sup>5</sup> See NIA's Petition for Further Reconsideration ("NIA Petition") at pp. 2-5, CTN Petition for Clarification and Further Reconsideration ("CTN Petition") at pp. 3-5; California Educators' Petition for Further Reconsideration ("California Educators' Petition") at pp. 2-6. NIA also points out that the Commission's decision with respect to high power boosters has not been reflected properly in the language of the applicable Rules.

<sup>6</sup> California Educators' Petition, pp. 4-5.

sale of ITFS frequencies to commercial entities.<sup>7</sup> ITF believes that this is a very drastic step, imperiling the very essence of ITFS as spectrum set aside for education. We join NIA, CTN, and the California Educators in asking that high power ITFS boosters be licensed only to ITFS entities.

III. ITF Supports the Request of IP Wireless That the Commission Revise the ITFS/MMDS Spectral Mask for Low Power Response Transmitters and Revise its Rules to Permit Omnidirectional Antennas at Subscriber Premises.

The Petition for Reconsideration of IP Wireless, Inc. ("IP Wireless Petition") makes a convincing case that loosening the spectral mask requirement for low power (-6 dBw maximum) response transmitters poses no interference threat.<sup>8</sup> ITF supports the revisions to Sections 21.906(d) and 74.937(b) as requested by IP Wireless.

ITF also sees no reason why the Commission should not explicitly authorize omnidirectional response station transmitting antennas for power levels of -6 dBw or less.<sup>9</sup>

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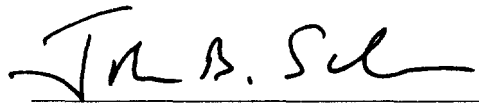
<sup>7</sup> In creating Section 74.990 of the Rules, the Commission permitted commercial entities to hold ITFS licenses in geographically remote areas where there is little educational demand for them. The issue at hand with respect to high power boosters is altogether different, in that it allows existing ITFS stations to be withdrawn from service and, in essence, reallocated for commercial use.

<sup>8</sup> IP Wireless Petition, pp. 4-10.

<sup>9</sup> See IP Wireless Petition, pp. 11-12.

Respectfully submitted,

INSTRUCTIONAL TELECOMMUNICATIONS  
FOUNDATION, INC.

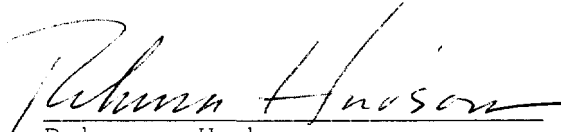
By:   
John B. Schwartz, President  
P.O. Box 6060  
Boulder, CO 80306  
(303) 442-2707

Dated: February 8, 2000



Certificate of Service

I, Rebecca Hudson, hereby certify that the foregoing Opposition to Petitions for Reconsideration was served this 9<sup>th</sup> day of February, 2000, by depositing a true copy thereof with the United States Postal Service, first-class prepaid, addressed to the parties listed on the attached list.

  
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